IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.366 OF 2007

Jayesh Shah ...Appellant

vs.

The Mumbai Metropolitan Region Development Authority ...Respondent

Mr.Havnoor i/b Ms Trupti Rangnekar for the Appellant
Ms Kiran Bangalia for the Respondent.

CORAM: A.S.OKA,J.
DATE : JUNE 12, 2007.

P.C.:

1. Submissions of the learned Counsel for the parties were heard yesterday. The challenge in this Appeal from Order is to the order dated 4th April 2007 passed by the learned Judge of the City Civil Court by which a Notice of Motion filed by the Appellant has been dismissed.

2. The Appellant is the original Plaintiff. The Appellant filed a suit for declaration that four notices issued by the Respondent were illegal, improper, malafide and bad in law. A prayer in the alternative was made for seeking permanent alternate commercial premises of the equivalent area in the vicinity of the suit premises which is more particularly described in clause (b) of the plaint. The subject matter of the suit is four shop premises on the ground floor of a building known as Jamuna Vihar, Andheri (west), Mumbai. The challenge in the suit is to the four different notices issued by the Respondent under section 3 Z-2 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971

(hereinafter referred to as the said Act of 1971). There is a communication dated 22nd February 2007 issued by the Respondent after considering the reply filed by the Appellant to the said four notices. In the said communication, it is stated that the construction which is in dispute was completely unauthorised as there was no permission granted by the Mumbai Municipal Corporation.

3. The learned trial Judge rejected the Notice of Motion taken out by the Appellant for temporary injunction by holding that the Appellant has not made out any prima facie case.

4. The learned Advocate for the Appellant pointed out that in terms of the order passed in the earlier suit filed by the Appellant, the Municipal Corporation has not considered the proposal for regularisation of the suit structure subject matter of this Appeal and the same is still pending. He submitted that by no stretch of imagination the power under section 3 Z-2 of the said Act of 1971 can be exercised by the Respondent as there is nothing on record to show that the land on which the offending structure is situated is declared as a slum area under section 4 of the said Act of 1971. He submitted that on the basis of notices issued under section 3 Z-2 of the said Act of 1971, the Respondent cannot exercise the power under the said Act of 1971 for demolition of the suit structure. The Respondent who is a public authority has not followed the due process of law and therefore the Appellant is entitled to the relief of temporary injunction.

5. The learned Advocate for the Respondent submitted that the work of road widening undertaken by the Respondent has been withheld due to existence of the offending structure of the Appellant. She submitted that the Respondent has undertaken the work of road widening of Barfiwala Road for extending the width of road to 120 ft. She placed reliance on the Affidavit of the Executive Engineer of the Respondent.

6. I have considered the submissions. It is not in dispute that in respect of the same structure, the Municipal Corporation had issued notice under section 351 of the said Act of 1888 and order of demolition was passed under section 351 of the said Act of 1888 on 8th February 2003. One Shri Pravin Satra on behalf of M/s.Jignesh Ply Centre filed a L.C.Suit No.6403 of 2003 for challenging the action under section 351 of the said Act of 1888. The present Appellant-Plaintiff is one Shri Jayesh Shah who has also filed the present suit on behalf of M/s.Jignesh Ply Centre. The said earlier suit and the Notice of Motion was disposed by the Trial Court by order dated 1st April 2006. The learned Judge has referred to the order dated 23rd December 2003 passed by his Predecessor in the said suit by which ad-interim relief was refused in favour of the Plaintiff in the suit. The said order dated 23rd December 2003 records the request made by the Plaintiff for grant of protection for a period of 15 days to enable the Plaintiff to submit a proposal for regularisation. The learned Trial Judge in paragraph 8 of the said order dated

1st April 2006 has observed that the very fact that the Plaintiff agreed to make an Application for regularisation clearly goes to show that the structure of the Plaintiff was unauthorised. Clauses 1 to 3 of the order passed by the trial court in the earlier suit reads thus :

"1. The plaintiff is directed to approach the concerned department as early as possible and comply with all the requirements called for by the corporation within two weeks from today, in respect of their regularisation application.

2. In case the plaintiff fails to comply the requirements called for by the Corporation, within two weeks from today, it will be presumed that the proposal of regularisation stands rejected.

3. In case of compliance of requirements within two weeks or prior thereto, the EEBP shall communicate its reasoned order within four weeks from today..."

7. The Plaintiff has relied upon the letter dated 20th November 2006 sent by the Advocate for the Plaintiff in the said earlier suit. In the said letter, what was sought to be alleged was that the Corporation had not at all called upon the Plaintiff to comply with any requirements as indicated in order dated 1st April 2006. The order dated 1st April 2006 is a self operative order. The said order directs the Plaintiff

in the earlier suit to comply with all the requirements called for by the Municipal Corporation in respect of regularisation Application within a period of two weeks from the date of order. The order specifically records that if the Plaintiff fails to comply with the requirements called for by the Corporation within stipulated period, it will be presumed that the proposal for regularisation stands rejected.

8. There is nothing on record to show that any proceeding was taken out by the present Appellant or by the Plaintiff in earlier suit for seeking clarification as regards order dated 1st April 2006. The Appellant did not comply with the requirements within the time stipulated by the said order. The order dated 1st April 2006 has attained finality. As a result, the proposal for regularisation made by the Plaintiff in the earlier suit in respect of the very structure stands rejected. The aforesaid order passed in the suit filed by the Appellant for challenging the action under section 351 of the said Act of 1888 has attained finality. It is pertinent to note that in the present suit the Appellant has claimed that he himself has filed the earlier suit though the name of the Plaintiff shown in the earlier suit is different. Going by his own case made out by the Appellant, it is obvious that the order dated 1st April 2006 binds the Appellant. The net result is that the order under section 351 of the said Act of 1888 of demolition of offending structure has attained finality and the proposal for regularisation made by the Appellant stands rejected on completion of a period of two

weeks from 1st April 2006. Thus, the relief claimed by the Appellant is in respect of the structure which is completely unauthorised.

9. It is true that prima facie the Respondent could not have taken action of demolition of the suit structure by invoking provisions of the said Act of 1971. However, grant of temporary injunction is always an equitable and discretionary relief. As held earlier, the offending structure is completely unauthorised. Moreover, in paragraph 5 of the affidavit dated 5th June 2007 the Executive Engineer of the Respondent has stated thus :

"5...The foot path which was appearing on the old road has been removed and the new foot path will be constructed beyond the existing road line. The footpath will be covered with interlocking cement concrete paver blocks and underneath the surface drain will be constructed. The work needs to be completed before the ensuing monsoon rains. The structures on both the sides of the petitioner’s structure have been demolished. On this part of the road, the petitioner’s structure is the only structure which is coming within the road widening proposal."

10. While dealing with the Application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure,1908 equitable relief of temporary injunction can never be extended to the

structure which is completely unauthorised and which is adversely affecting public utility work of road widening. Therefore, the learned Trial Judge was justified in rejecting the prayer for temporary injunction. As the structure is completely unauthorised, it cannot be allowed to obstruct the work of road widening.

11. The learned Counsel for the Appellant submitted that as per the policy of the Municipal Corporation, the Appellant is entitled to erect an additional structure as the suit structure is being demolished for road widening. The learned Advocate for the Respondent disputes the entitlement of the Appellant. However, this issue cannot be adjudicated upon in the Appeal. It will be open for the Appellant to apply for grant of compensation and any other relief on account of demolition of the suit structure.

12. Subject to what is observed above, Appeal is dismissed with no order as to costs.

13. It is made clear that the observations which are made in this Judgement about the legality and validity of the impugned notices are only for the purpose of deciding this Appeal. On the request made by the Advocate for the Appellant, ad-interim order of status quo granted by this Court is extended for a period of one week from today.

JUDGE